

TOMASINE THOMAS, Appellant	:	Order Affirming Decision
	:	
	:	
v.	:	
	:	Docket No. IBIA 91-23-A
ACTING ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	
	:	
	:	June 19, 1991

This is an appeal from an October 11, 1990, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs, concerning the issuance of a grazing permit for Range Unit No. 14 on the Standing Rock Reservation. Both appellant and the recipient of the grazing permit, Marcie Kahl, are members of the Standing Rock Sioux Tribe.

The Standing Rock Sioux Tribal Council allocated the range unit to Kahl on March 7, 1990. On March 22, 1990, the Acting Superintendent, Standing Rock Agency, BIA, issued Kahl a permit for a two-year term, beginning November 1, 1990. Appellant, who had also applied for the range unit, requested the Tribal Council to reconsider its decision. On April 4, 1990, after Kahl's permit had been issued, the Tribal Council rescinded the allocation to her and voted to allocate the unit to appellant. By letter dated April 10, 1990, the Superintendent informed Kahl that her permit was being cancelled. Kahl appealed and, on July 25, 1990, the Area Director reversed the Superintendent, holding that, under the tribal resolution governing grazing privileges, Kahl's permit could be cancelled only for a violation of the resolution or the permit. Appellant sought reconsideration from the Area Director, who reaffirmed his July 25 decision on October 11, 1990. Appellant then appealed to the Board.

Appellant's notice of appeal to the Board states in its entirety: "Please be advised that [appellant] hereby appeals the decision of the Area Director regarding Range Unit #14, dated October 11, 1990, Agriculture Management, MC-301, a copy of which is hereby enclosed." Appellant did not file either an opening brief or a reply brief. The Area Director filed a brief, arguing, *inter alia*, that the Superintendent had no basis for cancelling Kahl's permit under 25 CFR 166.15(b) or (c).

In appeals arising under 25 CFR Part 2, an appellant bears the burden of proving that the BIA decision appealed from was erroneous or not supported by substantial evidence. *See, e.g., Bell v. Aberdeen Area Director*, 19 IBIA 150 (1991); *Kays v. Muskogee Area Director*, 18 IBIA 431 (1990). In this case, appellant did not set forth any grounds for her appeal in her notice of appeal

and did not file a brief. She did, however, file a statement with the Board indicating that she intended to rely on materials already in the record. In her earlier filings with the Area Director, appellant argued, in essence, that she was more deserving than Kahl of the grazing allocation. In none of her filings, however, has she alleged error in the Area Director's conclusion that Kahl's permit could not be cancelled absent a violation of the permit by Kahl. Since that conclusion was the basis for the Area Director's decision, appellant's failure to challenge it amounts to a failure to carry her burden of proving error in the Area Director's decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Aberdeen Area Director's October 11, 1990, decision is affirmed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge